

REMARKS

Reconsideration of this application and entry of this Amendment is respectfully requested.

Claim 24 has been amended to more precisely recite the invention as a method of treating hair to “*deter the buildup of sebum on the surface of the hair*”, support for which can be found in applicants’ published application US2004/0265258 at paragraph [011] and original claim 13.

It is also noted that the claimed composition produces unexpected results of significantly improved conditioning performance as disclosed in Example 4, at paragraphs [047] *et seq.* The unexpected results of significantly improved conditioning performance are directly related to the reduction of sebum on the surface of the hair.

The rejection of claim 19 under 35 USC § 112, first paragraph as failing to comply with the written description requirement is respectfully traversed. The Examiner maintains that insertion of the word “about” before “1%” does not have support in the specification. Applicants respectfully disagree.

The use of the word “about” preceding the numerical range of a parameter is generally understood by those skilled in the art to characterize the entire numerical range. The repetitive use of the word “about” before each number in the range is an equivalent alternative. However, in order to obviate this issue and not split hairs over a semantic issue, claim 19 has been amended to delete the second occurrence of “about”. Accordingly reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 15, 16, 19-24 and 29 have rejected under 35 USC § 103 as unpatentable over Robinson et al (US2003/0049212) in view of Puchalaski et al (U.S. 4,690,818). This ground of rejection is respectfully traversed.

Applicants' claimed invention relates to a method of treating hair to deter the buildup of sebum on the surface of the hair by using a rinse out aqueous hair care composition containing unique blends of water dispersible or water soluble esters and surfactants that produce unexpected results.

In contrast, Robinson relates to a skin care composition containing niacinamide that is used to alleviate the signs of skin aging. Niacinamide has poor solubility characteristics and thus needs a tacky solvent to ensure solubility when applied to the skin. See paragraphs [05], [07], [09]. Thus, Robinson's invention is a composition containing a skin care active that is soluble in a tacky solvent. See paragraph [011]. It would be readily apparent to one of ordinary skill in the art that Robinson's invention relates to issues, concerns, and applications that are totally unrelated to applicants' claimed method.

As noted by Robinson, the skin care products contemplated in his invention include moisturizers, personal cleansing products, occlusive drug delivery patches, skin treatment emulsions, hair conditioners and the like. See paragraph [016]. However, all compositions in Robinson are formulated with the objective of delivering of a cosmetic active to alleviate the signs of skin aging, not to a method for deterring the buildup of sebum on the surface of the scalp hair.

The Examiner's effort to correlate the teachings of Robinson to make applicants' claimed invention obvious to those skilled in the art is an unreasonable distortion of Robinson. Without having the benefit of applicants' claimed invention there would not appear to be any incentive or basis to extrapolate the teachings of Robinson to relate to a method for treating hair to deter the buildup of sebum on the surface of the hair.

In addition to the above deficiencies, the Examiner admits on page 5 of the Office Action that Robinson does not explicitly teach PEG-7-glyceryl cocoate as claimed in claims 24 and 29.

It is respectfully submitted that the deficiencies of Robinson are not remedied by the Examiner's further reliance upon Puchalaski.

Puchalaski discloses a shampoo or bath shower gel that remains on the skin and hair for extended periods of time, (column 4, lines 22-26). There is no disclosure or suggestion in Puchalaski of a method for treating the hair to deter the buildup of sebum on the surface of the hair.

Puchalaski's composition requires a combination of cocodimonium hydrolyzed keratin and a mixture of monosaccharides and disaccharides in combination with amino acids (column 1, lines 23-30). Puchalaski emphasizes that the combination of components in his composition is unique, (column 1, lines 43-53) which would indicate to one of ordinary skill in the art that the indiscriminate substitution of other components would not provide Puchalaski's objective of "*unexpectedly good substantivity*" (column 1, lines 11-13), that is, the composition remaining on the skin and hair for extended periods of time to provide skin and hair conditioning and moisturizing properties (column 4, lines 22-26).

Puchalaski's disclosure of PEG-7-glyceryl cocoate, as well as hexylene glycol, propylene glycol, or sorbital, and sodium pyrrolidonecarboxylic acid are as optional humectants and/or emollients (column 2, lines 37-45).

Even if there was an incentive in Robinson which would make it obvious to one skilled in the art to select a component from Puchalaski to serve as a humectant or emollient, there is no justifiable basis for one of ordinary skill in the art to conclude that this combination would provide a method to deter the buildup of sebum on the surface of the hair.

Rather, the only motivation for such a conclusion has been provided by applicants' claimed invention, which the Examiner has used as a template with unjustified hindsight to construct a composition, and not applicants' claimed method for deterring the buildup of sebum on the surface of the hair. Accordingly reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 15, 16, 19-24, 30 and 31 have been rejected under 35 USC § 103 as unpatentable over the aforementioned Robinson et al in view of the article by Garruto. This ground of rejection is respectfully traversed.

The deficiencies of Robinson have already been discussed and are equally applicable herein. In addition, the Examiner acknowledges on page 6 of the Office Action that Robinson does not explicitly teach PEG/PEG-8/3 laurate or polyglycerol-3-laurate as claimed in claims 24, 30 and 31.

It is respectfully submitted that the deficiencies of Robinson are not remedied by its combination with Garruto.

Garruto discloses esters for use as emollient and moisturizing agents such as PEG-8 PPG-3 diisostearate, PEG-90 diisostearate, polyglycerol-3 laurate, and PEG-8/PPG-3 laurate. Garruto does not disclose these substances in the context of components in a method for treating hair to deter the buildup of sebum on the surface of the hair.

As already noted, Robinson provides no incentive to substitute the emollients and moisturizers from Garruto to provide a method for reducing the buildup of sebum on the surface of the hair. Therefore, even if such a substitution could be made in Robinson, there is no basis for one skilled in the art to conclude that the combination collectively suggests applicants' claimed method.

Accordingly, reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 15, 16, 19-24 and 32 have been rejected under 35 USC § 103 as unpatentable over the aforementioned Robinson in view of Mercier et al (U.S. 7,488,471). This ground of rejection is respectfully traversed.

The deficiencies of Robinson have already been discussed and are equally applicable herein. In addition, the Examiner acknowledges on page 8 of the Office Action that Robinson does not disclose sucrose laurate as claimed in claims 24 and 32.

The combination of Robinson with Mercier does not resolve the deficiencies of Robinson but rather compounds them. Mercier relates to a transparent or clear oil-in-water emulsion comprising an oil phase containing at least one lipophilic solvent; an aqueous phase; and an emulsifying system containing at least one non-ethoxylated fatty acid ester having an HLB from about 11 to about 16 (column 2, lines 31-35).

Mercier et al disclose a wide range of cosmetic and pharmaceutical applications for the transparent emulsion to be used as a vehicle for deodorants, skin and moisturizing gels, conditioner and glosser gels, sunscreen agents, skin tightening gels and pharmaceutically active ingredients. (column 4, line 62 – column 5, line 16). There is no disclosure in Mercier to use the transparent oil-in-water emulsion composition in a method for reducing the buildup of sebum on the surface of the hair, using the unique combination of components claimed by Applicants.

Consequently, even if any of the components of Mercier were substituted in Robinson, the resultant combination does not collectively suggest a method for treating hair to deter the buildup of sebum on the surface of the hair.

Therefore, reconsideration and withdrawal of this ground of rejection is respectfully requested.

In view of the above arguments and amendments to the claims, it is respectfully submitted that this application is now in condition for allowance and such favorable action is respectfully requested.

Respectfully submitted,

Dated: September 9, 2009

By: /Charles J. Zeller/
Charles J. Zeller
Registration No. 28,682

Correspondence Address:
Avon Products, Inc.
Avon Place
Suffern, NY 10901-5605
Phone: (845) 369-2113
Fax: (845) 369-2900